

**PATENT****Application # 09/867,803****Attorney Docket # 1005-006****REMARKS**

The Examiner is respectfully thanked for the consideration provided to this application. Reconsideration of this application is respectfully requested in light of the foregoing amendments and the following remarks.

The Examiner is also thanked for determining each of claims 2 and 7-8 allowable. The Examiner is further thanked for indicating that each of claims 3 and 4 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 1-8 are now pending in this application. Each of claims 1-8 are in independent form.

**1. The Anticipation Rejections**

Each of claims 1 and 5-6 was rejected as anticipated under 35 U.S.C. 102(b). In support of the rejection, McLennan ("Statistics - A Powerful Edge!", 1998) was cited. These rejections are respectfully traversed.

**A. Legal Standards for a Proper Anticipation Rejection**

McLennan fails to establish a *prima facie* case of anticipation. See MPEP 2131. To anticipate expressly, the "invention must have been known to the art in the detail of the claim; that is, all of the elements and limitations of the claim must be shown in a single prior art reference, arranged as in the claim". *Karsten Mfg. Corp. v. Cleveland Golf Co.*, 242 F.3d 1376, 1383, 58 USPQ2d 1286, 1291 (Fed. Cir. 2001). The single reference must describe the claimed subject matter "with sufficient clarity and detail to establish that the subject matter existed in the prior art and that its existence was recognized by persons of ordinary skill in the field of the invention". *Crown Operations Int'l, LTD v. Solutia Inc.*, 289 F.3d 1367, 1375, 62 USPQ2d 1917, 1921 (Fed. Cir. 2002). Moreover, the prior art reference must be sufficient to enable one

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with ordinary skill in the art to practice the claimed invention. *In re Borst*, 345 F.2d 851, 855, 145 USPQ 554, 557 (C.C.P.A. 1965), *cert. denied*, 382 U.S. 973 (1966); *Amgen, Inc. v. Hoechst Marion Roussel, Inc.*, 314 F.3d 1313, 1354, 65 USPQ2d 1385, 1416 (Fed. Cir. 2003) ("A claimed invention cannot be anticipated by a prior art reference if the allegedly anticipatory disclosures cited as prior art are not enabled.") The USPTO "has the initial duty of supplying the factual basis for its rejection." *In re Warner*, 379 F.2d 1011, 154 USPQ 173, 178 (C.C.P.A. 1967).

As explained at MPEP 2111.01, the words of a claim must be given their plain meaning unless they are defined in the specification. Further, in a relatively recent *en banc* ruling, the Federal Circuit held that "[e]ven when guidance is not provided in explicit definitional format, the specification may define claim terms by implication such that the meaning may be found in or ascertained by a reading of the patent documents." *Phillips v. AWH Corp.*, No. 03-1269 (Fed. Cir. 2005) (*en banc*) (citing *Novartis Pharms. Corp. v. Abbott Labs.*, 375 F.3d 1328, 1334-35 (Fed. Cir. 2004)). "Importantly, the person of ordinary skill in the art is deemed to read the claim term not only in the context of the particular claim in which the disputed term appears, but in the context of the entire patent, including the specification." *Phillips v. AWH Corp.*, No. 03-1269 (Fed. Cir. 2005) (*en banc*).

**B. The claimed "plurality of variables"**

Claims 1, 5, and 6 recite, yet McLennan fails to teach or suggest, expressly or inherently, "for each of a plurality of observations", "obtaining a data set containing no more than one proxy value for each of a **plurality of variables**, each variable having a plurality of possible values".

The Office Action alleges that "in addition to battery's [sic] file variables [sic], McLennan [sic] also teaches 'battery size' variable [sic], with the value 'AA' for each battery". Thus, the Office Action apparently argues, leaning on page 81 of McLennan for support, that "battery size" is a variable. Yet the Office Action admits that McLennan describes only a single value, "AA", for that alleged "battery size" variable, thus suggesting that McLennan at most discloses

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that “battery size” is a constant and not a variable . Because claims 1, 5, and 6 require that “each variable hav[e] a plurality of possible values”, McLennan’s “battery size” can not be a “variable” as that term is used in claims 1, 5, and 6.

To the extent that the Office Action alleges that McLennan discloses that each battery has “file variables”, Applicant respectfully requests citation to the precise location in McLennan supporting that allegation.

The only remaining alleged “variable” mentioned in the Office Action is “battery life”. Yet even assuming *arguendo* that McLennan does disclose that “battery life” is a “variable” (an assumption with which Applicant disagrees), McLennan nevertheless fails to teach or suggest the claimed “plurality of variables”.

**C. The claimed “no more than one proxy value”**

Claims 1, 5, and 6 recite, yet McLennan fails to teach or suggest, expressly or inherently, “for each of a plurality of observations”, “obtaining a data set containing **no more than one proxy value** for each of a plurality of variables, each variable having a plurality of possible values”.

The Office Action asserts that “McLennan teaches that each battery’s life variable [sic]... has only one value” and that “the data set contains one proxy value for each variables [sic] (i.e., minutes)”. Yet in describing McLennan’s “results” and “data”, McLennan states that “[t]he lowest value is 363 and the highest value is 431”. Therefore, McLennan plainly indicates that the “data set” contains more than one “value” for “battery life” .

Thus, with regard to the alleged “battery life” variable, McLennan does not describe **the claimed “no more than one proxy value”**. Instead, to the extent that each alleged “value” for McLennan’s “battery life” is interpreted by the Office Action as equivalent to a “proxy value”, McLennan allegedly discloses “thirty” such alleged “proxy values”, which is **much more than “one proxy value”**.

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Claims 1, 5, and 6 recite, yet McLennan fails to teach or suggest, expressly or inherently, “calculating a percent of proxy values for the plurality of variables that equals a mode of that observation’s corresponding cluster’s proxy values for the corresponding variables”.

As described above, McLennan fails to teach or suggest a “plurality of variables”. Moreover, McLennan fails to teach or suggest “calculating a percent of proxy values for the plurality of variables”. To the extent the Office Action alleges that McLennan discloses “calculating a percent of proxy values” for “battery life”, McLennan nevertheless fails to teach or suggest “calculating a percent of proxy values” for any other alleged “variable”. Thus, McLennan fails to teach or suggest “calculating... for the plurality of variables”.

**E. The claimed “plurality of clusters”**

Claims 1, 5, and 6 recite, yet McLennan fails to teach or suggest, expressly or inherently, “for each of a plurality of observations, obtaining a data set ... containing a cluster assignment for the observation, the cluster assignment identifying one cluster from a plurality of clusters”; and “for each observation from the plurality of observations”, “calculating a percent of proxy values for the plurality of variables that equals a mode of that observation’s corresponding cluster’s proxy values for the corresponding variables”.

The Office Action asserts that “McLennan clearly teaches at page 83, ‘a mode of [sic] corresponding cluster’s proxy values’, wherein the cluster (i.e., ‘class interval’) is in the range 360-439, and that the “table at page 83 shows the mode of the observations [sic] corresponding cluster is 7 (i.e., ‘the most frequently observed value’)”.

To the extent Applicant can interpret them, these assertions at least ignore and mis-characterize the claim language. Moreover, it appears that these assertions prove that McLennan does not anticipate claims 1, 5 and 6.

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McLennan shows on page 81 that in the “class interval” of “390-399”, the tally was seven tick marks out of thirty total, and thus the “frequency” was “7” out of a “total” of “30”. If, as asserted by the Office Action, McLennan’s disclosed “7” is the “the mode of the observations [sic] corresponding cluster”, ostensibly, as asserted by McLennan on page 144, “because this value occurred the most often”, then the Office Action is apparently arguing that McLennan discloses only a single “cluster” which contains all 30 “battery life” measurements, for which “7” is the alleged “mode”.

Yet the claims require that “the cluster assignment identify[] one cluster from a **plurality of clusters**”. So where does McLennan teach or suggest a “plurality of clusters”?

**F. The claimed “mode of” an “observation’s” “cluster’s proxy values”**

Claims 1, 5, and 6 recite, yet McLennan fails to teach or suggest, expressly or inherently, “calculating a percent of proxy values for the plurality of variables that equals a **mode of that observation’s corresponding cluster’s proxy values** for the corresponding variables”.

As discussed above, McLennan fails to teach or suggest more than one “variable”, and thus does not teach or suggest the claimed “variables”.

But assuming *arguendo* that McLennan does disclose even a single variable (an assumption with which Applicant disagrees), which the Office Action asserts is “battery life”, the Office Action admits that McLennan does not teach or suggest more than one “proxy value” for even that single variable, let alone a “plurality of variables”.

But assuming *arguendo* that McLennan does disclose such “proxy values” (an assumption with which Applicant disagrees), as explained above, McLennan fails to teach or suggest “a plurality of clusters”, and instead at most discloses only a single “cluster”.

Thus, to the extent that the Office Action interprets McLennan’s “a most frequently observed value” as a “mode”, that alleged “mode” is for all the “battery life” “values” rather than

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being “a mode of” a single “cluster’s proxy values”, that single cluster being one of “a plurality of clusters”.

Thus, McLennan fails to teach or suggest “a mode” of the claimed subject matter.

**G. The claimed “obtaining a data set” for each observation**

Claims 1, 5, and 6 recite “for each of a plurality of observations”, “obtaining a data set containing no more than one proxy value for each of a plurality of variables, each variable having a plurality of possible values, the data set also containing a cluster assignment for the observation, the cluster assignment identifying one cluster from a plurality of clusters”; and “for each observation from the plurality of observations, calculating a percent of proxy values for the plurality of variables that equals a mode of that observation’s corresponding cluster’s proxy values for the corresponding variables”.

The Office Action asserts that “McLennan teaches the data set obtained from each of a plurality of observations of battery life for thirty AA size batteries, the data set contains one proxy value for each variables [sic] (i.e., the minutes), wherein the possible value for each variables [sic] ranges from 360 to 439”. Thus, the Office Action appears to assert that each entry in the list of numbers presented near the top of McLennan’s page 81, is both a “proxy value for each of a plurality of variables” and an “observation”.

Yet claims 1, 5, and 6 do not recite a “data set obtained from... a plurality of observations”, but instead recite “obtaining a data set” “for each... observation[]”. Thus, once again, the Office Action has mis-characterized and misinterpreted the claimed subject matter. If McLennan’s first “battery life” “value” and “observation” is 423, where does McLennan disclose the “data set” “for” that alleged “observation”?

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For at least the above-described reasons, McLennan fails to teach or suggest, either explicitly or inherently, the subject matter of any of claims 1, 5, and 6. Accordingly, it is respectfully submitted that the rejection of claims 1, 5, and 6 is unsupported by McLennan and should be withdrawn.

**2. Allowable Subject Matter**

The following is a statement of reasons for the indication of allowable subject matter: "none of the references of record alone or in combination disclose or suggest the combination of limitations found in the independent claims. Namely, claims 1, 5, and 6 are allowable because none of the references of record alone or in combination disclose or suggest 'for each of a plurality of observations', 'obtaining a data set containing no more than one proxy value for each of a plurality of variables, each variable having a plurality of possible values, the data set also containing a cluster assignment for the observation, the cluster assignment identifying one cluster from a plurality of clusters'; and 'for each observation from the plurality of observations, calculating a percent of proxy values for the plurality of variables that equals a mode of that observation's corresponding cluster's proxy values for the corresponding variables'".

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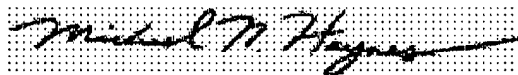
**CONCLUSION**

It is respectfully submitted that, in view of the foregoing remarks, the application is in clear condition for allowance. Reconsideration, withdrawal of all grounds of rejection, and issuance of a Notice of Allowance are earnestly solicited.

The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. 1.16 or 1.17 to Deposit Account No. 50-2504. The Examiner is invited to contact the undersigned at 434-972-9988 to discuss any matter regarding this application.

Respectfully submitted,

Michael Haynes PLC



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Michael N. Haynes  
Registration No. 40,014

1341 Huntersfield Close  
Keswick, VA 22947  
Telephone: 434-972-9988  
Facsimile: 815-550-8850